
(2002) 10 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 23539 of 1994

Samar Bahadur Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2003) 1 AWC 113

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : C.B. Yadav, N.P. Singh, Ashok Khare and S.D. Shukla, for the Appellant; Jagannath Singh and C.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. The brief facts of the case are that while the petitioner was posted as Constable in Railway Protection Force, he was served with a charge-sheet, dated 21.10.1992. Following two charges were levelled against the petitioner :

(1) While discharging his duties in Train No. 2622 Up on 4/5.10.1992, the petitioner failed to get down at Jhansi with other staff and was over carried upto Beena.

(2) The petitioner failed to come on duty which was entrusted upon him on 9/10.10.1992, in shift to perform the colony patrolling duty at Jhansi when he was detailed along with Constable Suresh Chandra Upadhyay.

3. The petitioner submitted his reply and the inquiry officer, after holding the enquiry, submitted his report on 9.10.1992 holding that both the charges against the delinquent constable are proved.

4. The Disciplinary Authority thereafter by the impugned order dated 14.12.1992 removed the petitioner from service with immediate effect.

5. Aggrieved by the aforesaid order, the petitioner filed an appeal before the Deputy Chief Security Commissioner, Railway Protection Force, Central Railway, Bombay V.T. which was rejected by the Chief Security Commissioner, vide order dated 7.4.1993.

6. The petitioner has challenged the validity of these two orders, dated 14.12.1992 passed by respondent No. 3 and that dated 7.4.1993 passed by respondent No. 2.

7. The only point pressed before this Court is that the petitioner was not given the report of the inquiry officer and he has been removed from service without issuing a show cause notice. He states that the order of removal is without any opportunity to the petitioner and without application of mind.

8. The counsel for the petitioner has relied upon the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., in support of his contention that It is the right of an employee to have the report, to defend himself effectively and it will not be proper to construe his failure to ask for the report as the waiver of his right. The Apex Court in the aforesaid judgment has held that whether the employee asks for the report or not, the report has to be furnished to him.

9. From paragraph 1 of the appeal of the petitioner, which is appended as Annexure-5 to the writ petition, it is apparent that the petitioner was given a copy of the enquiry report and he has made a specific reference to it, which is as under :

"1. That the order passed by the D.S.C., Jhansi, is not a speaking order which makes me feel that my worthy D.S.C. has not applied his mind otherwise this extreme penalty would not have been imposed on me. It would be seen that the learned inquiry officer, on page 17 of his enquiry report has set two points for consideration in relation to Charge No. 1".

Thus, the first contention of the petitioner that he was not supplied the enquiry report is against the material on record. Apart from the above, the petitioner has also annexed the copy of the enquiry report as Annexure-2 to the petition.

10. So far as the other limb of the argument of the petitioner is concerned, i.e., the appellate authority has not given any reasons while rejecting the appeal, is also not tenable. It is settled law that when the appellate authority disagrees with the findings of the inquiry officer, only then reasons are required to be given but when he concurs with the findings, then detailed reasons need not be given.

11. The standing counsel has contended that the petitioner was issued a charge-sheet for major penalty for committing serious misconduct inasmuch as he failed to get down at Jhansi when other staff got down there and further failed to come on duty on 9/10.10.1992. He has further contended that there is no provision to give show cause notice in Railway Protection Force Rules, 1987 and that the petitioner has filed this petition only on 22.7.1994, which suffers from laches. No application has been filed by the petitioner explaining the laches in filing the writ

petition.

12. For the aforesaid reasons, the petition is devoid of merit.

13. The petition fails and is dismissed. There is no order as to costs.